

Title	Probate Rules Concerning Adjustments to the Graduated Filing Fee and Waivers of Account in Decedents' Estates (adopt rule 7.552 in title 7 of the California Rules of Court, and amend existing rule 7.550, effective January 1, 2004).
Summary	Proposed new rule 7.552 would provide for adjustments to the graduated filing fee at the time of the final account or report in a decedent's estate proceeding filed on or after August 18, 2003. Existing rule 7.550 concerning waivers of account would be amended to require compliance with rule 7.552 when an account is waived in a decedent's estate proceeding subject to that rule.
Source	Probate and Mental Health Advisory Committee
Staff	Douglas C. Miller, Committee Counsel, 415-865-7535, douglas.miller@jud.ca.gov
Discussion	<p><u>Rule 7.552</u></p> <p>Government Code section 26827, as amended by Stats.2003, ch. 159, §§ 9, 27 (AB 1759), provides for a graduated filing fee in decedents' estates commenced on or after August 18, 2003, based on the value of the assets of the estate.<sup>1</sup> The graduated filing fee in each estate is to be initially determined and paid at the time the first petition for probate is filed in the proceeding, based on the petitioner's estimate of the value of the estate as of the date of the decedent's death. The petitioner must make this estimate in the <i>Petition for Probate</i>, Judicial Council form DE-111.</p> <p>Government Code section 26827(b), as amended, requires the graduated filing fee to be adjusted at the time of the final account in the estate by comparing the estimated filing fee actually paid with the filing fee that would have been payable if the actual appraised value of the estate had been used to determine the fee. Section 26827(b) provides that this adjustment is to be made <i>under rules adopted by the Judicial Council</i>. Rule 7.552 is proposed in response to this statutory direction.</p> <p>Proposed rule 7.552(a) would require a separate schedule to be included in every final account or report in a decedent's estate proceeding commenced on</p>

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<sup>1</sup> Section 27 of the 2003 legislation provides that the amendment to Government Code section 26827 is to become operative fifteen days after the effective date of the legislation. As urgency legislation, AB 1759 became effective on August 2, 2003, the date the governor signed it. (See Stats.2003, ch. 159, § 29.) The amendment to section 26827 thus became operative on August 17, 2003, a Sunday. Therefore, the first day a decedent's estate proceeding could be commenced by the filing of a petition for probate subject to the graduated filing fee was Monday, August 18, 2003.

or after the operative date of the graduated filing fee under AB 1759. The schedule would be required to contain the information necessary for the court and the petitioning personal representative of the estate to determine whether an adjustment in the graduated filing fee is required under section 26827(b), and if so, the amount of that adjustment.

Paragraph (a)(6) of the proposed rule would require the petitioning personal representative to state the amount of the graduated filing fee that would have been payable if the actual appraised value of the assets of the estate, as reflected in the Inventories and Appraisals on file in the proceeding, had been used to determine the fee (the “Corrected Filing Fee”). Paragraph (a)(7) of the rule would require the petitioner to calculate the difference between the filing fee actually paid based on the initial estimated value of the estate (the “Estimated Filing Fee”) and the Corrected Filing Fee. That difference is the amount of the adjustment required by the statute.

Subdivisions (b) or (c) of the proposed rule would govern situations where the Corrected Filing Fee is, respectively, greater or less than the Estimated Filing Fee. If the Corrected Filing Fee is greater than the Estimated Filing Fee, the petition filed with the account or report would be required to allege that the difference between the fees had been paid to the clerk of the court, and a copy of the clerk’s receipt for the payment would be a required exhibit to the account or report. If the Corrected Filing Fee is less than the Estimated Filing Fee, the petitioning personal representative would be eligible to apply to the court for a refund of the difference between the fees, without interest, in accordance with the court’s local rules and practices for such payments.

Subdivision (d) of proposed rule 7.552 would govern the situation where a petitioner that has filed a *Petition for Probate* and paid a graduated filing fee on that petition, withdraws the petition before an order is filed appointing a personal representative on that petition. This provision is intended to cover the common occurrence where a decedent’s estate proceeding is commenced because the petitioner mistakenly believes that certain assets of a decedent must be administered in the proceeding.<sup>2</sup> Once the mistake becomes clear, the petitioner should be permitted to withdraw the petition and receive a refund of amounts paid for the estimated filing fee in excess of the minimum fee required under Government Code section 26827 because there will in fact be no decedent’s estate proceeding to transfer the assets that were the basis for the estimated filing fee.

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<sup>2</sup> For example, the petitioner may discover shortly after commencing the estate proceeding that the assets in question were actually held by the decedent as trustee of a living trust, were held in joint tenancy, or are subject to a surviving spouse’s right to succeed to them without administration under Probate Code section 13500, *et seq.*

The minimum fee payable under the statute, \$185.00, would not be refunded in the situation covered by subdivision (d). The withdrawing petitioner would thus be placed in the same position he or she would have occupied if the graduated fee provisions had not been added to Government Code section 26827.

*Filing fee “add-ons”*

Rule 7.552 as proposed does not address the effect of additions to the filing fee authorized by statutes other than Government Code section 26827. These “add-ons” have caused the basic filing fee in decedents’ estates to increase from \$185.00—the lowest amount authorized under current section 26827 and the amount that was payable under that code section before its 2003 amendment—to \$239.50 in San Francisco and \$244.50 in Los Angeles. Differences between courts in the total filing fees charged generally depend on which of these “add-ons” that require local court or county governmental action have been adopted in particular courts and counties.

These additional fees are not addressed in proposed rule 7.552 because the adjustment required by Government Code section 26827 by its terms applies only to the fee required by that section, and because of variations between courts in the application of these additional fees. This is a feasible approach where the add-ons are fixed sums and where an initial estimated filing fee is compared to a finally determined filing fee, as under proposed rule 7.552(a). If the additional fees are ignored in determining the amount of both the initial and the final filing fees for comparison purposes, the additional fees cancel each other out and may properly be ignored for purposes of the adjustment required under the proposed rule and section 26827.

However, difficulties are presented by a combination of proposed rule 7.552(d), providing for a partial filing fee refund to a petitioner that withdraws its petition, and the fact that one “add-on” fee is defined in part as a percentage of the filing fee prescribed by Government Code section 26827.

Government Code section 68087 authorizes a state surcharge of 10 percent of any fee specified in Government Code section 68085(c)(1), including the fee provided in section 26827. If applied to the graduated probate filing fee, this “add-on” fee would vary from a minimum of \$18.50 (10 percent of \$185.00) up to \$350.00 (10 percent of \$3,500.00), plus 10 percent of additional filing fees paid in excess of \$3,500.00 for estates in excess of \$3.5 million dollars.

The filing fee subject to refund under proposed rule 7.552(d) would not be determined by comparing an initial and a final filing fee. The amount refunded would instead be the amount of the filing fee actually paid under Government

Code section 26827, less the minimum fee required by that provision, \$185.00. Arguably, if a withdrawing petitioner should be eligible to receive a refund equal to the graduated filing fee paid in excess of the minimum fee under Government Code section 26827, he or she should also be eligible to receive a refund equal to the amount of the fee imposed by Government Code section 68087 in excess of \$18.50. On the other hand, a withdrawing petitioner should not become eligible to receive a refund of any fixed-sum “add-on” fee that was not refunded under the law as it existed prior to passage of AB 1759.

The advisory committee understands that some courts intend to calculate the percentage surcharge authorized by Government Code section 68087 against the total graduated filing fee authorized by section 26827 as amended. The committee does not know whether all courts intend to do so.

The advisory committee has not addressed the Government Code section 68087 surcharge in proposed rule 7.552(d). The committee requests public comments on this question, and on the more general question of whether and how to address percentage and fixed-sum “add-on” fees in the proposed rule.

#### Rule 7.550

This rule prescribes the required contents of a report where a full account has been waived by the beneficiaries of a decedent’s estate under the provisions of Probate Code section 10954. Rule 7.550 would be amended by breaking out the former one-paragraph rule into two subdivisions, including a numbered list of the report’s required contents in subdivision (b). The only substantive change would be the addition of a new item to that list as paragraph (10), calling for the information required under proposed rule 7.552(a) and (b) for all estates commenced on or after August 18, 2003.

The beneficiaries of an estate may waive any account, including a final account, under Probate Code section 10954. If a final account is waived, section 10954(c)(1) requires the personal representative to file a final report “at the time the final account would otherwise have been required.”

The proposed amendment to rule 7.550 would clarify that the information required by proposed rule 7.552 must be included in the personal representative’s final report even though a final account has been waived. This change is consistent with proposed rule 7.552, which refers to the personal representative’s “final account *or report*” in subdivisions (a) and (b).

Government Code section 26827(b) requires only that the filing fee adjustment be made “*at the time of the final account,*” not necessarily *in the final account*. (Italics added to quoted text.) Therefore, section 26827(b) also applies to a final report where a final account has been waived, due at the time the final

account would have been due. The information required by proposed rule 7.552 is necessary in every decedent's estate proceeding subject to the graduated filing fee whether or not the beneficiaries waive a final account.

The text of the proposed new and amended rules is attached at pages 6–8.

A copy of Government Code section 26827, as amended by AB 1759, is attached at pages 9–10.

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Attachment

Rule 7.550 of the California Rules of Court would be amended, effective January 1, 2004 to read:

**Rule 7.550. Effect of waiver of account**

**(a) [Waiver of account]** If an accounting is waived under Probate Code section 10954, the details of receipts and disbursements need not be listed in the report required under section 10954(c)(1).

**(b) [Information required in report on waiver of account]** ~~However, The~~ report required when an account has been waived must list the information required by law, including information as to:

(1) Creditors' claims;

(2) Sales, purchases or exchanges of assets;

(3) Changes in the form of assets;

(4) Assets on hand;

(5) Whether the estate is solvent;

(6) Detailed schedules of receipts and gains or losses on sale (where an amount other than the amount of the Inventory and Appraisal is used as a basis for calculating fees or commissions);

(7) Costs of administration (if reimbursement of these costs is requested);

(8) The amount of any fees or commissions paid or to be paid; ~~and~~

(9) The calculation of such fees or commissions as described in rule 7.705;  
and

(10) For decedent's estate proceedings commenced on or after August 18, 2003, the information required by subdivisions (a) and (b) of rule 7.552.

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Rule 7.552 would be adopted, effective January 1, 2004 to read:

**Rule 7.552. Graduated filing fee adjustments**

(a) **[Separate schedule for graduated fee information]** The final account or report filed in every decedent's estate proceeding commenced on or after August 18, 2003 must include a separate schedule showing the following information:

(1) The name of each petitioner on the first-filed Petition for Probate in the proceeding;

(2) The date the first-filed Petition for Probate was filed in the proceeding;

(3) The estimated value of the estate shown in item 3, "[e]stimated value of the estate for filing fee purposes," of the first-filed Petition for Probate in the proceeding;

(4) The filing fee paid by or for the petitioner on the first-filed Petition for Probate in the proceeding;

(5) The following information from the Inventories and Appraisals filed in the proceeding:

(A) The total actual appraised value of the assets of the estate shown in each filed partial, supplemental, or final Inventory and Appraisal;

(B) Changes in the appraised value of the assets of the estate shown in each filed corrected Inventory and Appraisal;

(C) The date each partial, supplemental, final, or corrected Inventory and Appraisal was filed; and

(D) the total actual appraised value of the estate shown in all filed partial, supplemental, final, and corrected Inventories and Appraisals.

(6) A statement of the amount of filing fee that would have been payable under Government Code section 26827, as amended effective on the date the first-filed Petition for Probate was filed in the proceeding, if the total actual appraised value of the estate had been used as the estimated value for filing fee purposes (the "Corrected Filing Fee"); and

1           (7) Calculation of the difference between the estimated filing fee paid under  
2           Government Code section 26827 upon filing the first Petition for Probate  
3           in the proceeding (the “Estimated Filing Fee”) and the “Corrected Filing  
4           Fee” as determined under (6).

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6           **(b) [If Corrected Filing Fee more than Estimated Filing Fee]** If the Corrected  
7           Filing Fee is more than the Estimated Filing Fee, as determined under (a), the  
8           petition filed with the final account or report must allege that the difference  
9           between them has been paid to the clerk of the court, and a copy of the clerk’s  
10          receipt for the payment must be attached as an exhibit to the account or report.

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12          **(c) [If Estimated Filing Fee more than Corrected Filing Fee]**

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14          (1) If the Estimated Filing Fee is more than the Corrected Filing Fee, as  
15          determined under (a), the personal representative of the decedent’s estate  
16          is eligible under this subdivision to receive a refund of the difference  
17          between them, without interest.

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19          (2) The personal representative must apply to the court for the refund, in  
20          accordance with the court’s local rules and practices for such payments.

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22          (3) Unless authorized to retain a reserve against closing expenses that  
23          expressly is to include the court’s refund payment after the personal  
24          representative’s discharge, the personal representative must not apply for  
25          a discharge while an application for refund of filing fee under this  
26          subdivision is pending and before the court’s refund payment is received.

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28          **(d) [Refund on withdrawn Petition for Probate]**

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30          (1) A petitioner that files a Petition for Probate on or after August 18, 2003  
31          and withdraws the petition at any time after it is filed and before an order  
32          granting the petition and appointing a personal representative is filed, is  
33          eligible under this subdivision to receive a refund, without interest, of that  
34          portion of the filing fee paid on the withdrawn petition under Government  
35          Code section 26827 that exceeds the lowest filing fee authorized under  
36          that section, effective on the date the fee was paid.

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38          (2) The petitioner on a withdrawn Petition for Probate under (1) must apply  
39          to the court for the refund, in accordance with the court’s local rules and  
40          practices for such payments.



**Section 9, AB 1759**  
**(Government Code section 26827)**

SEC. 9. Section 26827 of the Government Code is amended to read:

26827.

- (a) The total fee for filing the first petition for letters of administration, a petition for special letters of administration, a petition for letters testamentary, or a first account of a testamentary trustee of a trust that is subject to the continuing jurisdiction of the court pursuant to Chapter 4 (commencing with Section 17300) of Part 5 of Division 9 of the Probate Code is, as follows:
  - (1) One hundred eighty-five dollars (\$185) for estates under two hundred fifty thousand dollars (\$250,000).
  - (2) Two hundred fifty dollars (\$250) for estates of at least two hundred fifty thousand dollars (\$250,000) and less than five hundred thousand dollars (\$500,000).
  - (3) Three hundred fifty dollars (\$350) for estates of at least five hundred thousand dollars (\$500,000) and less than seven hundred fifty thousand dollars (\$750,000).
  - (4) Five hundred dollars (\$500) for estates of at least seven hundred fifty thousand dollars (\$750,000) and less than one million dollars (\$1,000,000).
  - (5) One thousand dollars (\$1,000) for estates of at least one million dollars (\$1,000,000) and less than one million five hundred thousand dollars (\$1,500,000).
  - (6) Two thousand dollars (\$2,000) for estates of at least one million five hundred thousand dollars (\$1,500,000) and less than two million dollars (\$2,000,000).
  - (7) Two thousand five hundred dollars (\$2,500) for estates of at least two million dollars (\$2,000,000) and less than two million five hundred thousand dollars (\$2,500,000).
  - (8) Three thousand five hundred dollars (\$3,500) for estates of at least two million five hundred thousand dollars (\$2,500,000) and less than three million five hundred thousand dollars (\$3,500,000).
  - (9) Three thousand five hundred dollars (\$3,500) plus 0.2 percent of the amount over three million five hundred thousand dollars (\$3,500,000) for estates of three million five hundred thousand dollars (\$3,500,000) or more.

- (b) The petitioner under subdivision (a) shall estimate the value of the decedent's estate in the petition. The filing fee shall be determined based on the estimate by the petitioner at the time the petition is filed. If the final appraised value of the decedent's estate would result in a filing fee different from the filing fee actually paid, an adjustment shall be made at the time of the final account, under rules adopted by the Judicial Council. The filing fee for a trustee under subdivision (a) shall be based on the value of the trust shown in the first account.
- (c) The total fee for filing the first petition for letters of guardianship, a petition for letters of conservatorship, a petition for compromise of a minor's claim, a petition pursuant to Section 13151 of the Probate Code, a petition pursuant to Section 13650 of the Probate Code, except as provided in Section 13652 of the Probate Code, or a petition to contest any will or codicil is one hundred eighty-five dollars (\$185).
- (d) A fee of one hundred eighty-five dollars (\$185) shall also be charged for filing any subsequent petition of a type described in subdivision (a) or (c) in the same proceeding by a person other than the original petitioner.
- (e) This section shall become inoperative on July 1, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.